IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 14825 of 2004(M)

OS.276/2001 of PRINCIPAL SUB COURT,ERNAKULAM
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PETITIONER:

MAMMEN VARGHESE, PRINTER AND PUBLISHER,
MALAYALA MANORAMA, KOTTAYAM.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS:
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1. SHRI K.M. SUDHAKARAN, S/O. MAMU,
GENERAL SECRETARY, KERALA SAMSTHANA MADYA VYAVASAYA THOZHILALI FEDERATION, KRISHNAPILLA BHAVAN, ERNAKULAM NORTH, KOCHI-18, RESIDING AT KALAVAMPARA VEEDU, NAYARAMBALAM P.O.

2. SHRI MAMMEN MATHEW, S/O.K.M.MATHEW,
EDITOR, MALAYALA MANORAMA, HAVING HIS OFFICE AT MALAYALA MANORAMA BUILDING, KOTTAYAM.

3. SHRI.A.B.GIJIMON, CORRESPONDENT,
MALAYALA MANORAMA DAILY, THIRUVANANTHAPURAM.

4. M/S.MALAYALA MANORAMA COMPANY,
KOTTAYAM REPRESENTED BY ITS MANAGING DIRECTOR,
MALAYALA MANORAMA, KOTTAYAM.

BY ADV. SRI.MATHEW KURIAKOSE
SRI.KOSHY GEORGE
SRI.R.D.SHENOY (SR.)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF THE PLAINT DTD.11.4.01 IN OS 276/01 ON THE FILE OF THE SUB COURT, ERNAKULAM.**

EXT.P2 **TRUE COPY OF WRITTEN STATEMENT DTD. 19.7.02 FILED BY THE DEFENDANTS IN OS 276/01 ON THE FILES OF THE SUB COURT, ERNAKULAM.**

EXT.P3 **TRUE COPY OF THE PETITION I.A.4464/03 DTD.7.10.03 FILED BY THE PLAINTIFF IN OS 276/01 ON THE FILES OF THE SUB COURT, ERNAKULAM.**

EXT.P4 **TRUE COPY OF STATEMENT OF OBJECTION DTD.24.11.03 FILED ON BEHALF OF THE DEFENDANTS IN I.A.4464/03 IN OS 276/01 ON THE FILES OF THE SUB COURT, ERNAKULAM.**

EXT.P5 **TRUE COPY OF ORDER DTD. 30.1.04 IN I.A. 4464/03 IN OS 276/01 OF THE SUB COURT, ERNAKULAM.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 14825 OF 2004

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Dated this the 6th day of June, 2007.

J U D G M E N T

This writ petition is preferred against the order of the learned 1st Addl. Sub Judge, Ernakulam in I.A.4464/03. I.A.4464/03 is an application filed by the plaintiff to substitute the 2nd defendant in the suit. On receipt of summons the 2nd defendant had entered appearance and filed written statement that he is not the Printer and Publisher of M/s Malayala Manorama Company. Thereafter, the present application is filed, i.e., Ext.P3 with the prayer; "It is therefore just and necessary that this Hon'ble Court may be pleased to strike out the name of Mr. Jacob Mathew, and to add the name of Mr. Mammen Varghese, as defendant No.2 and allow me to carry out necessary amendments". This petition was filed on the 7th day of October, 2003. The Court by Ext.P5 order has allowed I.A. without costs. It is against that decision the writ petitioner has come up before this Court.

2. The learned senior counsel would contend that the Court below has gone wrong in allowing the said I.A. without

considering the fact that the valuable plea of limitation which is available to the writ petitioner has been taken away. It is submitted by him that an action for libel has to be taken within one year and in this case it has already elapsed on the date of filing of the application and therefore it has to be dismissed.

3. On the other hand, the learned senior counsel appearing for the plaintiff would contend that Order 1 Rule 10 (2) envisages a situation of striking out addition of parties and in a case where there is only a sole defendant and substitution is prayed for, it may not be possible. But in other cases it may be possible for such a substitution. What is to be decided in this case is whether any valuable right which the writ petitioner has is taken away by virtue of allowing the impleading petition. If there is limitation it will debar the plaintiff from getting any relief against the writ petitioner. It is a thing that has to be considered and decided. Even C.P.C. provides for a mechanism and that is why in Order 1 Rule 10(5) there is a clause "Subject to the provisions of the Indian Limitation Act(Act 15 of 1877 - Section 22), the proceedings as against any person added as defendant shall be deemed to have begun only on the service of summons. Or in other words if the court finds that the cause of action arise

against that particular person only on receipt of summons, then the larger question whether the claim against such a person is maintainable or barred by limitation is a question that has to be adjudicated. Now, in a case of this nature it is imperative for the Court to protect the right of both parties as law envisages. Just because impleadment is allowed it would not relate back to the date of filing of the plaint. When the proposed person enters appearance and files written statement contending for the position that the suit against him is barred by limitation and the applicability of Order 1 Rule 10(5) has to be considered, the Court is bound to consider the same and answer that point. So when such an opportunity is given to the proposed party then his right in spite of impleadment remains in tact and the court can dispose of the matter after hearing both sides. Therefore, the writ petition is disposed of as follows:

The trial court on filing of written statement by the proposed party and on his raising an issue on limitation is directed to consider the point of beginning of the cause of action against the proposed party as directed in Order 1 Rule 10(5). After entering into a definite finding the Court is directed to proceed further in the matter in accordance with law and any person aggrieved by

such a decision can resort to appropriate legal remedies. The proposed defendant has now accepted the summons. Both the parties are directed to appear before the trial court on 2.07.2007.

M.N. KRISHNAN, JUDGE.

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